REMARKS

Please reconsider the application in view of the foregoing amendments and the following remarks.

Status of Claims

Claims 1-3, 8, 11, 13 and 16 are herein amended. New claim 17 is herein presented. The support of these amendments may be found in at least Figs. 4, 6, 8, 11 and 13 and corresponding sections thereto in the present specification. Also, Applicant notes that the amendment to claims 1, 13, and 16 merely clarifies and makes explicit what was already implicitly recited in the claims.

Information Disclosure Statement

Applicants note with appreciation the Examiners thorough consideration of the references cited in the Information Disclosure Statement (IDS) submitted on March 1, 2006

As to the Merits

As to the merits of this case, the Examiner sets forth the following rejections:

Claims 1-3, [6 and 16] were rejected under 35 U.S.C. 102(b) as being anticipated by **Takeuchi** (US 2003/0020342).

Claim 4 was rejected under 35 U.S.C. 103(a) as being unpatentable over **Takeuchi** (US 2003/0020342 Al), further in view of **Eguchi** (US 6,338,694 Bl).

Claim 5 was rejected under 35 U.S.C. 103(a) as being unpatentable over **Takeuchi** (US 2003/0020342 A1), further in view of **Amisano** (US 2002/0016232 A1).

Claim 7 was rejected under 35 U.S.C. 103(a) as being unpatentable over **Takeuchi** (US 2003/0020342 Al), further in view of **Ibaraki** (US 5,722,911 A).

Claims 8 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over **Takeuchi** (US 2003/0020342 Al), further in view of **Furuta** (US 2002/0150267 Al).

Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over **Takeuchi** (US 2003/0020342 Al), further in view of **Toyooka** (US 5,479,778 A).

Claims 11 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over **Takeuchi** (US 2003/0020342 Al), further in view of **Kinugawa** (US 2003/0193406 A1).

Claims 13 and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over **Tatsumi** (US 5,155,996 A), further in view of **Wax** (US 5,745,159 A) and **Kinugawa** (US 2003/0193406 A1).

Claim 14 was rejected under 35 U.S.C. 103(a) as being unpatentable over **Tatsumi** (US 5,155,996 A), **Wax** (US 5,745,159 A), and **Kinugawa** (US 2003101 93406 A1), further in view of **Matsuda** (US 2005/0149244 A1).

Each of these rejections is respectfully traversed.

Claim Rejections - 35 U.S.C. §102

In order to anticipate an invention under 35 U.S.C. §102, the prior art reference must not only disclose all elements of the claim within four corners of the document, but must also disclose those elements arranged as in the claim.

Independent Claims 1 and 16

Claim 1, as amended, is drawn to at least ... *a part configured for setting a target value with respect to a frequency distribution of a prescribed state value relating to an operational condition of the construction machine, said frequency distribution is a rate at which said prescribed state value occurs; a part configured for detecting a prescribed state value; and a control part configured for calculating the frequency distribution of said prescribed state value detected by said part configured for detecting, comparing said frequency distribution thus calculated with said target value set by said part configured for setting, and outputting a*

previously prepared message in accordance with the comparison result. Claim 16, as amended, is drawn to a method claim reciting similar features.

It is respectfully submitted that the cited reference of Takeuchi discloses that the phase of detection signal having frequency corresponding to the motor rotation speed, and the phase of reference signal having the reference frequency are compared in the motor driving device. The Examiner interprets the meaning of "frequency" of the claimed invention as being same or similar to the meaning of signal "frequency" of Takeuchi.

However, it is submitted that the recited "frequency" term of the claimed invention means "the rate at which it happened" or "how frequently it happened". Therefore, it is expressed with the sign of "%" in Figs. 4, 6, 8, 11, 13. This is totally different from the signal frequency disclosed in Takeuchi, i.e. "the number of waves for every second of a signal" or "the number of vibration of a signal" expressed in units of Hz (cycles/sec).

In view of the foregoing, because the frequency distribution recited in the claimed invention is completely different from the "frequency" as taught in Takeuchi, it is respectfully submitted that Takeuchi necessarily fails to disclose the *setting, detecting and control* parts as recited in claims 1 and 16. Therefore, the rejection based on anticipation in claims 1 and 16 is overcome.

As noted above, in order to anticipate an invention under 35 U.S.C. §102, the prior art reference must not only disclose all elements of the claim within four corners of the document, but must also disclose those elements arranged as in the claim.

Since Takeuchi does not disclose all elements of the claimed invention, it is respectfully submitted that the rejection of claims 1-12 and 16 is improper and respectfully request that it be withdrawn.

Claim Rejections - 35 U.S.C. §103

A prima facie case of obviousness requires that the combination of the cited prior art, coupled with the general knowledge in the field, must provide all of the elements of the claimed invention.

Independent Claim 13

Claim 13, as amended, is drawn to … *a part configured for setting a target value with respect to a frequency of a workless state of the construction machine, said frequency is a rate at which said workless state occurs; a part configured for detecting a workless state during a period that an engine of said construction machine is operated; and a control part configured for calculating a frequency of said workless state detected by said part configured for detecting,*

comparing the frequency of said workless state thus calculated with said target value set by said part configured for setting, and outputting a previously prepared message in accordance with the comparison result.

It is respectfully submitted that the cited reference of Wax discloses that in a system for distributing entertainment signal to a plurality of audio and video receivers, the amplitude of pilot tone of the specified frequency of the entertainment signal is monitored and the monitored amplitude is compared with the target amplitude in order to maintain the amplitude of the entertainment signal at a desired level.

This is completely different from "frequency" as recited in the claimed invention which means "the rate at which it happened" or "how frequently it happened". Consequently, it is expressed with the sign of "%" in Figs. 4, 6, 8, 11, 13. This is totally different from the signal frequency disclosed above by Wax, i.e., "the number of waves for every second of a signal" or "the number of vibration of a signal" expressed in units of "Hz".

In view of the foregoing, because the frequency distribution recited in the claimed invention is completely different from the "frequency" as taught in Wax, it is respectfully submitted that Wax necessarily fails to disclose the *setting, detecting and control* parts as recited in claim 13.

Furthermore, on page 10 of the Office Action, it is acknowledged that "Tatsumi does not disclose a control means (35) for calculating a frequency of said workless state detected by said detecting means, comparing the frequency of said workless state thus calculated with said target value set by said setting means, and outputting a previously prepared message in accordance with the comparison result." In addition, this deficit is not remedied by the Kinugawa reference.

Because the cited references do not teach *a part configured for setting a target value with respect to a frequency of a workless state of the construction machine, said frequency is a rate at which said workless state occurs; a part configured for detecting a workless state during a period that an engine of said construction machine is operated; and a control part configured for calculating a frequency of said workless state detected by said part configured for detecting, comparing the frequency of said workless state thus calculated with said target value set by said part configured for setting, and outputting a previously prepared message in accordance with the comparison result* in claim 13, it is respectfully submitted that a person of ordinary skill in the art would not make the combination suggested by the examiner as obvious and the resulting combination would not yield the invention in claims 13-15. Accordingly, it is respectfully requested that the rejection under 35 U.S.C. 103 be withdrawn.

Dependent claim 14

The Examiner has rejected dependent claim 14 under 35 U.S.C. 103(a) as being unpatentable over Tatsumi (US 5,155,996 A), Wax (US 5,745,159 A), and Kinugawa (US 2003101 93406 A1), **further in view of Matsuda (US 2005/0149244 A1)**. Applicants traverse.

It is respectfully submitted that Matsuda (US Publication 2005/0149244 A1) and the present application are both assigned to our client **Komatsu LTD., Tokyo, Japan**. Also, Matsuda has a valid 102(e) date because it was published on July 7, 2005 and has an effective filing date August 24, 2004 which is prior to PCT filing date of Sep 1, 2004 of the present application.

The undersigned, applicants' attorney of record, hereby state that Application 10/570,153 and Patent Application Publication US 2005/0149244 were, at the time the invention of Application 10/570,153 was made, wholly owned by Komatsu LTD. Therefore, pursuant to the provisions of the statute 35 U.S.C. §103(c), Applicants hereby request that the rejection under 103(a) is no longer viable and request that it be withdrawn.

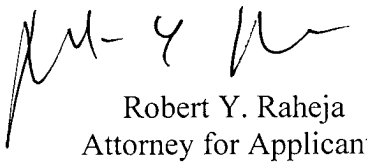
Conclusion

The Claims have been shown to be allowable over the prior art. Applicants believe that this paper is responsive to each and every ground of rejection cited in the Office Action dated March 4, 2009, and respectfully request favorable action in this application. The Examiner is invited to telephone the undersigned, applicants' attorney of record, to facilitate advancement of the present application.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP



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